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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th June 2007

No.7709-1i/1-(BH)-5/1997/L.E.—In pursuance of section 17 of the Industrial Disputes Act,1947 (14 of 1947), the award dated the 18th January 2007 in I.D.Case No. 5/1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Managing Director of M/s. Sankerko LAMPCS Ltd., Sankerko, Dist: Mayurbhanj and its workman Shri Jhadeswar Mohanta was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT , BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 5 of 1999

Dated the 18th January 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Managing Director of
M/s. Sankerko Lamps Ltd.,
Sankerko, Dist: Mayurbhanj. ... First-Party—Management
And
Its Workman
Shri Jhadeswar Mohanta. ... Second-Party—Workman

Appearances :

None ... For First-Party—Management

Shri J. Mohanta. ... For Second-Party—Workman himself

AWARD

The Government of Orissa, Labour and employment Department referred the present dispute between the Managing Director of M/s. Sankerko Lamps Limited, Sankerko, District-Mayurbhanj and Shri Jhadeswar Mohanta under Notification No. 5323/LE., dated 18th May 1998 vide Memo No. 15601(5)/LE., dated 21st December 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the action of the Managing Director of M/s. Sankerko Lamps Limited, Sankerko, District- Mayurbhanj refusing employment to Shri Jhadeswar Mohanta, Salesman with effect from 25th January 1983 in the guise of the suspension and without paying subsistence allowance with effect from 31st May 1990 is legal and/or justified ? If not, to what relief the workman is entitled to ?”

3. Shorn of all un-necessary details, the case of the workman in brief is as follows :

The workman namely Jhadeswar Mohanta had been appointed as Salesman with effect from 16th May 1980 under the Management of Managing Director, M/s. Sankerko Lamps Limited, Sankerko, Mayurbhanj (hereinafter referred to as the Management) and had worked in such capacity upto 25th January 1983. On 25 January 1983 the workman was placed under suspension by the Management. Although the workman was placed under suspension with effect from 25th January 1983 he was not paid any subsistence allowance. The workman filed to Misc. Cases under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) bearing Misc. Case Nos. 23/89 and 238/90 before this Court and in those cases order was passed by the Labour Court, Bhubaneswar for payment of subsistence allowance to the applicant upto 31st May 1990. There after the Management with an assurance that they would give him subsistence allowance, obtained the signature of the workman in a plain paper with a further condition that they would adjust the audit recovery of Rs. 9,300.04 but the Management did not pay the rest of the amount but fraudulently added at the bottom of the agreement that the workman would not claim any dues or service from the Lampcs in future. The Management framed charge against the workman vide order dt. 13th July 1992. No enquiry against the workman has yet been concluded. During conciliation proceeding before the District Labour Officer, Mayurbhanj, the Management took a stand that the services of the workman has not been terminated and he has not been dismissed from service. The action of the Management in terminating the services of the workman by way of long pending suspension and harassment to him by non-payment of subsistence allowance is illegal and unjustified. On these grounds, the workman has prayed for his reinstatement in service with full back wages.

4. The Management has been set *ex parte* vide order dated 27th February 2002.

5. The workman has examined himself as W.W.1. In his evidence. W.W.1 has stated that while he was working as Salesman under the Management since the 16th May 1980 he was placed under suspension with effect from the 25th January 1983. Ext.1 has been proved as the xerox copy of the suspension order. After suspending the workman from his service the Management did not pay him any subsistence allowance, forcing the workman to file two Misc.cases under Section 33-C(2) of the I.D. Act before the Labour Court. when the Labour Court Directed the Management to pay the subsistence allowance a paltry sum of Rs. 10,650/- was given to the workman and he is yet to get a balance amount of Rs. 2,708/-. In his evidence the workman has further stated that he has not been gainfully employed elsewhere since the date of his suspension. Since the Management has been set *ex-parte* the evidence of W.W.1 remains unchallenged.

6. From the evidence of W.W.1 it is clear that although the workman was suspended from service with effect from the 25th January 1983 he was first not paid any subsistence allowance and only after the order of the Court only part of the subsistence allowance was paid to the workman and thereafter although charges have been framed against the workman, the enquiry has not yet been completed. Such callous attitude of the Management shows that only more pretence of an enquiry has been made in the instant case and it is a clear case of deliberate and blatant defiance of principles of natural justice, by a callous employer. Therefore the action of the Management amounts to refusal of work to the workman with effect from the 25th January 1983 in the guise of suspension and such long pending suspension can not be justified on any ground.

7. Hence ordered :

The Management is directed to pay subsistence allowance to the workman at the rate of 75% total pay and allowance of the workman with effect from the 31st May 1990 forthwith and to conclude the departmental enquiry against the workman within a period of 6(six) months from the of the present order. A copy of the Award be sent to the Management forthwith by the Government immediately after its publication under Section 17-A of the I.D. Act.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra
18-1-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
18-1-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government